

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 645 CS

Nursing Home Facilities

SPONSOR(S): Gelber

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 298

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care General Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Cicccone</u>	<u>Brown-Barrios</u>
2) <u>Domestic Security Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Wiggins</u>	<u>Newton</u>
3) <u>Health Care Appropriations Committee</u>	<u>13 Y, 0 N</u>	<u>Speir</u>	<u>Massengale</u>
4) <u>Health & Families Council</u>	<u>10 Y, 0 N, w/CS</u>	<u>Cicccone</u>	<u>Moore</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

House Bill 645 CS provides legislative intent to encourage all nursing homes to have emergency electrical power system capacity to allow these facilities to remain fully operational during and after an emergency and to provide care to residents evacuated from other nursing homes.

The council substitute specifies that the Agency for Health Care Administration (AHCA) implement a 2-year pilot program to reimburse certain nursing home facilities for the costs of installing a quick connect electrical service entry allowing a temporary generator connection. The council substitute also provides for reimbursement of up to one-half the cost of an electrical generator services contract, to a maximum of \$7,500 per year, to facilities participating in the pilot.

The total cost of providing reimbursements under this council substitute is estimated to be \$5.5 million, assuming participation by 100 percent of the eligible facilities. The reimbursement to nursing homes by AHCA, however, is subject to an appropriation.

The council substitute takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—The council substitute requires AHCA to implement a 2-year pilot program to reimburse certain nursing home facilities for costs associated with quick connection of an emergency generator and to reimburse up to a certain amount for the cost to retain a generator for emergency use.

Empower families—The council substitute provides increased safety options to individuals and families who either reside in or have family members residing in certain nursing home facilities.

Maintain public security—The council substitute increases the health, safety, and physical security of nursing home residents who reside in certain facilities before and during an emergency.

B. EFFECT OF PROPOSED CHANGES:

The council substitute creates s. 400.0627, F.S., providing legislative intent to encourage nursing home facilities to have an emergency electrical power system to allow these facilities to remain fully operational during and after an emergency and to provide care to residents evacuated from other nursing homes.

The Agency for Health Care Administration (AHCA) is required to implement a 2-year pilot program to reimburse nursing home facilities based on certain criteria. Participation in the pilot program is voluntary. Eligible facilities would receive state reimbursement based on available funds for the installation cost of a quick connect electrical service entry system allowing a temporary generator connection. Nursing homes that meet eligibility criteria would also be reimbursed for up to one-half the cost of a generator services contract, not to exceed \$7,500 per year for each year of the pilot program.

The effect of the quick connect electrical power system and the contract would be to provide eligible nursing homes, despite utility power outages, with the capacity to remain fully operational during and after an emergency and provide care of residents evacuated from other nursing facilities.

To be eligible for reimbursement, a nursing home facility must meet the following criteria:

- Be located in Bay, Broward, Collier, Dade, Escambia, Monroe, Okaloosa, Palm Beach, Santa Rosa, or Walton County.
- Not be in the hurricane evacuation zone in its county.
- Not have been cited for a class I deficiency as defined in s. 400.23(8)(a), F.S., within the last 30 months preceding the application for reimbursement.
- Have the capacity, as determined by AHCA, to receive transferred residents that are evacuated, and agree to receive those transferred residents.
- Have a contract with a company that is able to supply an electrical generator.

The pilot program is funded by state General Revenue. The council substitute directs AHCA to develop a reimbursement plan to draw down federal funds in order to expand the pilot program to other areas of the state. The plan is to be presented to the President of the Senate and the Speaker of the House of Representatives by December 31, 2006.

BACKGROUND

Hurricane Evacuation Zones

Hurricane evacuation zones are predetermined geographic areas that are likely to experience destruction or severe damage, from storm surge, waves, erosion, or flooding.¹ Depending on the track of the storm, the greater the intensity of a storm (tropical storm to Category 5 hurricane) the greater the geographic area that will experience these conditions and, therefore, need to be evacuated. The closer the nursing home is to the coast, the more likely that a nursing home will be located in an evacuation zone.

According to AHCA, there are 677 licensed nursing homes in Florida. During the 2005 hurricane season there were five recorded hurricanes that caused Florida evacuations. There were 21 nursing home facilities that were completely evacuated and four that were partially evacuated with a total of 1,795 patients being displaced. Only one nursing home facility was actually closed or became inactive during the entire 2005 season. There were 51 nursing home facilities that sustained some type of damage from the hurricanes. A total of 239 nursing home facilities lost power and switched to generators during the hurricane season with one additional nursing home facility losing power without the availability of a generator.²

AHCA estimates approximately 483 nursing facilities are not located in county hurricane evacuation zones.³ This represents approximately 70 percent of nursing home bed capacity.

Requirements for Nursing Home Licensure—Essential Electrical System

Since July 1982, all nursing home facilities licensed under part II of chapter 400, F.S., have been required by rule to have an onsite Essential Electrical System (EES) with an onsite fuel supply of up to 64 hours.⁴ The design, installation, operation, and maintenance of this EES is reviewed by AHCA.

The EES supplies electrical service to the three main electrical branches, including the Life Safety branch, the Critical Branch, and the Equipment Branch within 10 seconds of normal service interruption. As required by the National Fire Protection Association (NFPA) standards, these emergency electrical branches provide emergency electrical service to specified electrical components of the facility such as the fire alarm system, the nurse call system, the emergency egress lighting system, the exit lighting system, the magnetic door locking system, and selected critical convenience receptacles and equipment in the facility. In addition, since 1996, all new nursing home facilities and new additions to these facilities have been required to have an EES that supplies electrical power to all ventilating fans, ice making equipment, refrigeration equipment, and selected heating, ventilation, and air conditioning equipment as determined by the facility, for a period up to 72 hours of continuous service at actual load capacity of the generator.

The EES is not required to provide electrical service to the heating, ventilation, and air conditioning (HVAC) equipment of the facility nor to the general lighting or other electrical items not specifically required by the National Fire Protection Association codes and standards.

Deficiency Classifications

¹ According to NOAA, storm surge maps reflect the worst case hurricane storm surge inundation (including astronomical high tide), regardless of the point of where the center of the hurricane (or tropical storm) makes landfall. No single hurricane will necessarily cause all of the flooding represented on evacuation maps. The data reflect only still-water saltwater flooding and do not take into account the effects of pounding waves that ride on top of the storm surge in locations exposed to wave action. Evacuation maps do not show areas that may be flooded by excessive rainfall—they only depict flooding that would occur as a result of the ocean level rising as well as estuaries and rivers that can be affected by hurricane storm surge.

² Senate Staff Analysis and Economic Impact Statement SB 298, revised January 23, 2006

³ *Outline of Cost Analysis for SB 298 and HB 645 Providing Generators for Nursing Homes Revised as of 4/19/06*, prepared by the Agency for Health Care Administration, on file with the Committee.

⁴ FAC 59A-4.133. Of the 669 existing licensed nursing home facilities, there are 30 facilities constructed prior to 1982 that do not have an existing generator system. These facilities house only residents, who do not require any life support systems, and as such, these facilities are in compliance with all state and federal codes and standards through the use of a battery supplied emergency electrical system that supplies emergency power to the life safety components of the facility as required by NFPA 99 for 1-½ hours duration. These components include the fire alarm, nurse call, emergency egress lighting, exit lighting, and locking systems.

Section 400.23, F.S., requires AHCA to evaluate all nursing home facilities against standards and make a determination as to the degree of compliance by each licensee with the established standards adopted in rules. The agency bases its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. Findings of deficient practice are classified according to the nature and the scope of the deficiency.

There are four classes of deficiencies:

- A class I deficiency is a deficiency in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.
- A class II deficiency is a deficiency that has compromised a resident's ability to maintain or accomplish his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class III deficiency is a deficiency that will result in no more than minimal physical, mental, or psychosocial discomfort to the resident or has the potential to compromise the resident's ability to maintain or accomplish his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class IV deficiency is a deficiency that will result in no more than a minor negative impact on the resident.

According to AHCA, data from the most recent 30-month period indicates that 21 facilities located outside of evacuation zones⁵ have received a class I deficiency. The classification of a deficiency affects the licensure status of the facility. A conditional license is issued if a facility has one or more class I or class II deficiencies, or class III deficiencies not corrected within the time established by the Agency. In addition, a facility that is cited for a class I deficiency, two or more class II deficiencies arising from separate surveys or investigations within a 60-day period, or has had three or more substantiated complaints within a 6-month period, each resulting in at least one class I or class II deficiency, is placed on a 6-month survey cycle for the next 2-year period.

Evacuation and Transfer of Nursing Home Residents

Section 400.23(2) (g), F.S., requires AHCA to develop rules after consultation with the Department of Community Affairs that require each nursing home to develop a comprehensive emergency management plan (CEMP). At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; post disaster activities, including emergency power, food, and water; post disaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency must ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elder Affairs, the Department of Health, the Agency for Health Care Administration and the Department of Community Affairs. The local emergency management agency must complete its review within 60 days and either approves the plan or advises the facility of necessary revisions.

Rule 59A-4.126, F.A.C., incorporates by reference a publication (AHCA 3110-6006, March 1994) that lists the minimum criteria for a nursing home's CEMP. The CEMP must state the procedures to ensure that emergency power, whether natural gas or diesel, is supplied to the nursing home. If the fuel supply is natural gas, the plan must identify alternate means should loss of power occur that would affect the natural gas system. The plan must state the capacity of the emergency fuel system.

C. SECTION DIRECTORY:

Section 1. Creates s. 400.0627, F.S., providing legislative intent; requiring AHCA to establish a two-year pilot program to provide state financial assistance to eligible nursing home facilities to upgrade

⁵ *Outline of Cost Analysis for SB 298 and HB 645 Providing Generators for Nursing Homes Revised as of 4/19/06*

their emergency electrical power system capacity; and requiring AHCA to prepare a reimbursement plan to expand the pilot program.

Section 2. Provides that the council substitute takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

AHCA advises that each facility choosing to participate in the pilot will be required to pay a \$2,000 plan review fee per current statutes for the review of the facility electrical system changes necessitated by the quick connect.⁶ Assuming a participation rate of 100 percent or 138 facilities, those fees would total \$276,000.

2. Expenditures:

Information provided by AHCA⁷ indicates that the cost of the pilot would be approximately \$5.5 million over the two year period, assuming participation by 100 percent of the eligible facilities.

County	Number of Eligible Facilities	Quick Connect Cost (one time cost @ \$25,000/facility)	Total Generator Retainer Contract Reimbursement (maximum \$7,500/year)
Bay	6	\$150,000	\$90,000
Broward	28	\$700,000	\$420,000
Dade	28	\$700,000	\$420,000
Escambia	11	\$275,000	\$165,000
Okaloosa	8	\$200,000	\$120,000
Palm Beach	53	\$1,325,000	\$795,000
Santa Rosa	3	\$75,000	\$45,000
Walton	1	\$25,000	\$15,000
TOTAL*	138	\$3,450,000	\$2,070,000

In addition, AHCA advises it will require additional administrative and professional staff to process and review the electrical system plans and requests for reimbursements. It estimates those costs to be \$55,000 in recurring and \$5,000 in non-recurring expenditures.⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If implemented the council substitute should have a positive economic effect on businesses that develop, sell, rent, install or provide maintenance for large electrical generators.

⁶ Agency for Health Care Administration 2006 Bill Analysis and Economic Impact Statement Amended HB 0645, Version Approved: April 14, 2006.

⁷ Derived from Outline of Cost Analysis for SB 298 and HB 645 Providing Generators for Nursing Homes Revised as of 4/19/06, and Skilled Nursing Facility Sorted by County, 4/19/2006.

⁸ Agency for Health Care Administration 2006 Bill Analysis and Economic Impact Statement Amended HB 0645, Version Approved: April 14, 2006.

D. FISCAL COMMENTS:

The council substitute makes the reimbursement to nursing homes subject to an appropriation by the Legislature.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This council substitute does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds. This council substitute does not reduce the percentage of a state tax shared with counties or municipalities. This council substitute does not reduce the authority that municipalities have to raise revenue.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The council substitute provides that AHCA may adopt rules to administer the pilot program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Domestic Security Committee adopted an amendment that will reimburse the cost of the pre-designed electrical service entry that allows a quick connection to a temporary electrical generator based on the lowest of three bids secured by the nursing home facility. Each facility must submit copies of the three bids with its request for plan approval to the agency. The committee substitute was reported favorably with committee substitute.

On April 20, 2006, the Health and Families Council adopted three amendments to HB 645 CS. The amendments:

- expand participation in the pilot to additional counties
- clarify the maximum annual reimbursement amount for the generator services contract
- require AHCA to develop a reimbursement plan in order to expand the program beyond the pilot area.

The Council reported HB 645 CS favorably with council substitute. This analysis is drafted to the council substitute.